



City of Cape Coral

February 10, 2003

Governor Jeb Bush
PL 05 The Capitol
400 South Monroe Street
Tallahassee, FL 32399-0001

Dear Governor Bush:

As you know, the City of Cape Coral is a unique asset within the State because of its location on more than 400 miles of canals. The city offers families and homeowners of moderate means open and available access to our waterways. The City's vision and economic future are under threat, however, as a result of recent actions and proposals by the federal government as part of the federal government's manatee protection program.

We know that you and your staff have been personally involved in addressing the drastic measures being proposed, and we applaud your efforts. The issue is not commitment to manatee protection - Cape Coral has a strong commitment to manatee protection. For example, we recently added an additional \$300,000 to our budget to double our manatee enforcement staff. Rather, the issue is whether the federal agencies with responsibility for this issue are advancing reasonable and sound proposals in the name of manatee protection.

In this context, we would like to convey to you our serious concern about the stipulated order that was proposed on January 24, 2003 in relation to the case of Save the Manatee Club v. Ballard, which is pending in Washington, D.C. Together with the earlier settlement agreement arising out of this case, the stipulated order is inappropriately driving current and ongoing regulatory efforts for manatee protections in Florida, a function that we believe should rest on state-adopted protections. The implications of the order for the City of Cape Coral are enormous and extend well beyond what is needed for the proper conservation of manatee populations in Florida.

The City of Cape Coral believes the commitments being made pursuant to these orders completely over-reach the proper exercise of the authorities conferred upon the Secretary of the Interior under the Marine Mammal Protection Act ("MMPA"). The City of Cape Coral believes that the State must become involved in order to resolve these matters in an orderly and sensible fashion.

The settlement agreement and stipulated order should not dictate specific regulatory initiatives under the MMPA because their primary aim is to resolve a legal dispute over a procedural deadline. By definition, the settlement agreement was designed to avert certain legal proceedings against the federal defendants, and these have nothing to do with the matters addressed in the order. As we understand it, the immediate goal of the stipulated order was to resolve a legal predicament that the Secretary of the Interior found herself in due to what seems to have been a misunderstanding as to a filing deadline. In order to avoid a threatened contempt citation, the federal defendants have made substantial commitments to impose additional regulatory burdens on Cape Coral and elsewhere in the state.

The settlement agreement and stipulated order were not reached after consultation with the affected public. Rather, they were worked out behind closed doors among a small group of lawyers in Washington DC. They purport to impose highly specific and burdensome restrictions on the municipalities and citizens of Florida who have nothing to do with the potential liability of federal agencies, or whether the Secretary met a tiling deadline. Sound policy analysis, science and economics, rather than negotiated back-room deals, should underlie manatee protection regulations.

As a result of this deal, municipalities such as Cape Coral will suffer devastating effects. Our economy is entirely based around residents' access to waterways, and we have already undertaken numerous manatee protection efforts. Nonetheless, the refuge and sanctuary rules required by the settlement agreement and stipulated order dramatically decrease boating opportunities in our area. Moreover, since the initial settlement agreement was adopted in January 2001, virtually no dock or boat ramp permits have been approved in our area.

Rather than addressing this serious problem, the new FWS directives in the proposed order stipulate a manner for undertaking endangered species consultation obligations that will fully shackle the permitting processes in a wholly inappropriate manner. Informal consultation under the ESA has a purposeful and useful role. However, the proposed order proposes to eliminate it in wholesale fashion. If the proposed order remains unchanged, the de facto near-moratorium on permitting will be made complete -- even in areas where Cape Coral has been expressly advised by the Fish and Wildlife Service that manatee protection is adequate.

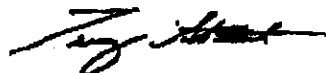
A prolonged dock moratorium will have a serious effect on the City's economy, including reduced property values, losses to construction and marine industries, loss of employment, and a crippling effect on the community tax base. Despite impacts such as these, none of the affected Florida municipalities or residents were represented in the negotiations for the settlement agreement or stipulated order. Their interests have not been considered.

The proposed order is, with all due respect, grossly unfair. It also comes in the context of a broader proposed federal rule that will continue and expand these burdensome restrictions for up to 5 years in all of Southwest Florida. The City of Cape Coral has expressed its strong opposition to this proposed rule in comments filed with Fish and Wildlife Service. A copy of those comments is attached for your reference.

The City of Cape Coral believes that the State of Florida should assume an active role in addressing this regulatory morass and ensuring that proper regulatory processes are adopted. A Florida marine mammal is at issue, as are the economic fortunes and lifestyles of Florida residents. The settlement agreement and stipulated order are part of a larger regulatory process that is quite literally spinning out of control. It is being determined by the wrong people in the wrong place. We strongly encourage the state to step in and take all appropriate measures to bring order to the process.

Cordially yours,

CITY OF CAPE CORAL



Terry Stewart, MPA
City Manager